

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WEBG, LLC,

Petitioner,

v.

CITY OF BREMERTON, a Washington
Municipal Corporation,

Respondent.

Case No. C06-05685 RBL

STIPULATION AND ORDER TO
REMAND LUPA PETITIONS AND
TO STAY PROCEEDINGS

NOTE ON MOTION CALENDAR:
JANUARY 3, 2007

STIPULATION

The parties, through their attorneys, stipulate as follows:

1. That both Petitioner WEBG, LLC (hereinafter "WEBG") and Respondent City of Bremerton (hereinafter "the City") filed petitions under Washington State's Land Use Petition Act (LUPA), RCW Chapter 36.70C, in Kitsap County Superior Court.
2. That the issues related to the LUPA petitions were thoroughly briefed by the parties and that on November 17, 2006 the parties argued the LUPA petitions before Kitsap County Superior Court, Visiting Judge Craddock Verser.

Stipulation and Order to Remand LUPA

Petitions - 1

ROGER A. LUBOVICH
BREMERTON CITY ATTORNEY
345 6th Street, Suite 600, Bremerton, Washington 98337
Phone: 360-473-2345 Fax: 360-473-5161

- 1
- 2 3. That on November 17, 2006, immediately prior to the LUPA hearing, Judge Verser
- 3 granted WEBG's motion to amend its LUPA petition to include additional damage claims
- 4 under state and federal law.
- 5
- 6 4. That on November 17, 2006, WEBG filed and served its Amended Land Use Petition
- 7 & Complaint for Damages.
- 8
- 9 5. That on November 22, 2006, the City filed a Notice of Removal.
- 10
- 11 6. That on December 20, 2006, WEBG filed an Objection to Removal and Motion for
- 12 Remand or Abstain and for Attorney's Fees and Memorandum Thereon set for hearing on
- 13 January 12, 2007.
- 14
- 15 7. That this Court has original jurisdiction over federal damage claims alleged in
- 16 WEBG, LLC's Amended Petition under 28 U.S.C. §§1331 and 1343.
- 17
- 18 8. That under 28 U.S.C. §§1367 and 1441(c) this Court has discretion whether to assert
- 19 supplemental jurisdiction over the LUPA petitions filed by both parties and the state law
- 20 damage claims alleged in WEBG, LLC's Amended Petition.
- 21
- 22 9. That since the LUPA petitions have been briefed and argued before the Kitsap
- 23 County Superior Court and since the issues related to the LUPA petitions involve
- 24 somewhat complex issues of Washington State law, the parties believe that the LUPA
- 25 petitions should be remanded to Kitsap County Superior Court.
10. That since WEBG's damage claims alleged in its Amended Land Use Petition &
- Complaint for Damages allege federal law claims, this Court should retain jurisdiction
- over the federal damage claims.

11. That since WEBG's alleged state law damage claims form part of the same case or controversy, this Court may exercise supplemental jurisdiction over the state law damage claims under 28 U.S.C. §1367, provided that WEBG shall have the opportunity to object and remove the state law claims after resolution of the LUPA claims.

12. That if this Court enters the below Order, the Court should strike WEBG's Objection to Removal and Motion to Remand or Abstain and for Attorney's Fees and Memorandum Thereon.

13. That the parties should not engage in any discovery on WEBG's damages claims until after Kitsap County Superior Court has issued a decision on the LUPA petitions.

14. That the causes of action over which this Court retains jurisdiction should be stayed until after the Kitsap County Superior Court has issued a decision on the LUPA petitions.

DATED this 3rd day of January, 2007.

ROGER A. LUBOVICH BREMERTON CITY ATTORNEY	BROUGHTON & SINGLETON, INC., P.S.
<u>/s/ Mark E. Koontz</u> Mark E. Koontz, WSBA #26212 Attorney for Respondent	<u>/s/ William H. Broughton</u> William H. Broughton, WSBA #8858 Attorney for Petitioner

ORDER

Based on the above stipulation of the parties, It Is Ordered:

1. That this Court has original jurisdiction over federal damage claims alleged in WEBG, LLC's Amended Petition under 28 U.S.C. §§1331 and 1343.

Stipulation and Order to Remand LUPA
Petitions - 3

ROGER A. LUBOVICH
BREMERTON CITY ATTORNEY
345 6th Street, Suite 600, Bremerton, Washington 98337
Phone: 360-473-2345 Fax: 360-473-5161

1
2 2. That under 28 U.S.C. §§1367 and 1441(c) this Court has discretion whether to
3 exercise supplemental jurisdiction over the LUPA petitions filed by both parties and the
4 state law damage claims alleged in WEBG, LLC's Amended Petition.

5
6 3. That since the LUPA petitions have been briefed and argued before the Kitsap
7 County Superior Court and since the issues related to the LUPA petitions involve
8 somewhat complex issues of Washington State law, the LUPA petitions are hereby
9 remanded to Kitsap County Superior Court.

10 4. That since WEBG's damage claims alleged in its Amended Land Use Petition &
11 Complaint for Damages allege federal law claims over which this Court has original
12 jurisdiction, this Court retains jurisdiction over WEBG's alleged federal damage claims.

13
14 5. That since WEBG's alleged state law damage claims form part of the same case or
15 controversy, this Court hereby exercises its supplemental jurisdiction over the state law
16 damage claims under 28 U.S.C. §1367 and retains jurisdiction over WEBG's alleged state
17 law damages claims until the LUPA proceedings are completed, at which time WEBG
18 shall have the opportunity to object and move to remand the state law claims after
19 resolution of the LUPA claims.

20 6. That WEBG's Objection to Removal and Motion to Remand or Abstain and for
21 Attorney's Fees and Memorandum Thereon is hereby stricken without an award of
22 attorney's fees to either party.

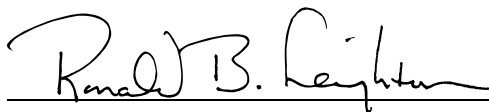
23
24 7. That the parties shall not engage in any discovery on WEBG's damages claims
25 until after Kitsap County Superior Court has issued a decision on the LUPA petitions.

Stipulation and Order to Remand LUPA
Petitions - 4

ROGER A. LUBOVICH
BREMERTON CITY ATTORNEY
345 6th Street, Suite 600, Bremerton, Washington 98337
Phone: 360-473-2345 Fax: 360-473-5161

8. That the causes of action over which this Court retains jurisdiction shall be stayed until after the Kitsap County Superior Court has issued a decision on the LUPA petitions.

ENTERED this 4th day of January, 2007.



RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE

Presented by:
Presentation

Approved as to form; Notice of

Waived:

ROGER A. LUBOVICH
BREMERTON CITY ATTORNEY

/s/ Mark E. Koontz

Mark E. Koontz, WSBA #26212
Attorney for Respondent City of
Bremerton

BROUGHTON & SINGLETON, INC., P.S.

/s/ William H. Broughton

William H. Broughton, WSBA #8858
Attorney for Petitioner

Stipulation and Order to Remand LUPA
Petitions - 5

ROGER A. LUBOVICH
BREMERTON CITY ATTORNEY
345 6th Street, Suite 600, Bremerton, Washington 98337
Phone: 360-473-2345 Fax: 360-473-5161